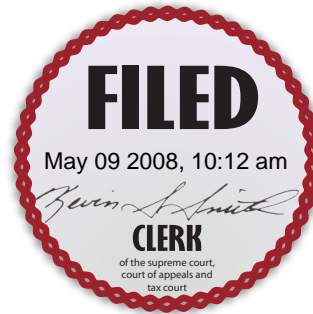


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

STATE OF INDIANA,

Appellant-Plaintiff,

vs.

CLINT A. JERVIS,

Appellee-Defendant.

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No. 08A02-0709-CR-767

APPEAL FROM THE CARROLL CIRCUIT COURT
The Honorable Donald E. Currie, Judge
Cause No. 08C01-0511-FB-30

May 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Clint A. Jervis was charged with four counts, which, listed in order, were possession

of chemical reagents or precursors with intent to manufacture methamphetamine¹ as a Class C felony, dealing in methamphetamine² as a Class B felony, dealing in a sawed-off shotgun³ as a Class D felony, and dealing in methamphetamine⁴ as a Class A felony. He was convicted of Counts I and III after the trial court granted his motion for directed verdict on Counts II and IV. The State appeals, raising the following issue: whether the trial court erroneously granted Jarvis's motion for directed verdict on Counts II and IV.

We reverse.

FACTS AND PROCEDURAL HISTORY

On November 9, 2005, Deputy John Chapman of the Carroll County Sheriff's Department was called to assist a detective from Tippecanoe County by going to Jarvis's residence in Carroll County to speak with him regarding an investigation from Tippecanoe County. When Deputy Chapman arrived at Jarvis's residence with the other detective, they knocked on the door, but nobody responded. Deputy Chapman observed a truck parked in the driveway near a detached garage, which he walked toward to obtain the license plate number. As he passed the bed of the truck, which was subsequently found to be registered to Jarvis, he saw a red cooler, camping fuel, a one-gallon milk jug with a hose coming out of the top, and a duffle bag that appeared to have a large cylinder inside. As the deputy knew these

¹ See IC 35-48-4-14.5.

² See IC 35-48-4-1. We note that Jarvis was charged under this statute, which is entitled dealing in cocaine or narcotic drug, but on July 1, 2006, IC 35-48-4-1.1 was added, which is specifically entitled dealing in methamphetamine.

³ See IC 35-47-5-4.1.

⁴ See IC 35-48-4-1.

items to be used in the manufacture of methamphetamine and because he also smelled the odor of ether, he called another deputy in order to obtain a search warrant.

After the search warrant was brought to the residence, the officers opened the red cooler from the back of the truck, found coffee filters, mixing spoons, a funnel, and a pair of pliers. Also, inside of the cooler was a jar that contained an orange-colored material, a jar that contained a white-colored material, a container of salt, drain cleaner, and a coffee mug that had lithium batteries inside. The orange-colored material was later determined to be 10.7 grams of methamphetamine. Inside of the green duffle bag, the officers discovered a large cylinder with modified fittings. When the officers examined the milk jug from the back of the truck, they noticed a rock-like substance at the bottom. Deputy Chapman recognized the milk jug with the hose in the top as a HCL generator, which is used in one of the processes of manufacturing methamphetamine. *Tr.* at 16.

The officers entered the attached garage and discovered a 250-pound cylinder containing anhydrous ammonia. Inside of the house, they found five or six bottles of Heet, which is normally used to remove water from gasoline, but which is also used in the manufacture of methamphetamine. Near the detached garage, a five-gallon bucket was found that contained an orange substance, which Deputy Chapman believed to be “pill dough,” a part of the first step in the process of manufacturing methamphetamine. *Id.* at 26.

The officers also discovered two separate burn piles on the property, one of which was located approximately twenty yards from the detached garage. These piles contained cans of starting fluid, in which holes had been punched, empty camping fuel containers, batteries, and the casings from batteries. All of these items had been burnt and were known to be used

in the manufacture of methamphetamine. In the cab of the truck parked in the driveway, a shotgun was found that had the barrel cut down to less than twelve inches.

During their search, the officers noticed what appeared to be a tablecloth in a field adjacent to Jarvis's residence. While the officers were observing the tablecloth, they noticed it moving. When the officers went to investigate, they discovered Jarvis hiding under the tablecloth.

The State charged Jarvis with Count I, Class C felony possession of reagents or precursors with the intent to manufacture methamphetamine, Count II, Class B felony dealing in methamphetamine, Count III, Class D felony dealing in a sawed-off shotgun, and Count IV, Class A felony dealing in methamphetamine. A jury trial was held on August 6, 7, and 8, 2007. At the conclusion of the State's case-in-chief, Jarvis moved for a directed verdict on all four counts. The trial court granted his motion as to Counts II and IV, but denied it as to Counts I and III. The State now appeals.

DISCUSSION AND DECISION

A trial court may grant a motion for a directed verdict only where there is a total lack of evidence regarding some essential issue, or where there is no conflict in the evidence and it is susceptible to only one inference, and that inference is in favor of the defendant. *State v. Taylor*, 863 N.E.2d 917, 919 (Ind. Ct. App. 2007); *Edwards v. State*, 862 N.E.2d 1254, 1262 (Ind. Ct. App. 2007), *trans. denied*. "Under no circumstances may a trial court considering a criminal defendant's motion weigh the evidence or the credibility of the witnesses." *State v. Casada*, 825 N.E.2d 936, 939 (Ind. Ct. App. 2005). The motion must be denied if there is evidence of each element of the crime charged, or if there are at least inconsistent possible

inferences. *Id.*

“If the evidence is sufficient to sustain a conviction upon appeal, then a motion for a directed verdict is properly denied; thus our standard of review is essentially the same as that upon a challenge to the sufficiency of the evidence.” *Edwards*, 862 N.E.2d at 1262. We view the evidence in a light most favorable to the party against whom a directed verdict would be entered and do not reweigh the evidence or judge the credibility of the witnesses. *Taylor*, 863 N.E.2d at 919.

The State argues that the trial court erred when it granted Jervis’s motion for directed verdict on Counts II and IV. In order to convict Jervis of dealing in methamphetamine as a Class B felony as charged in Count II, the State was required to prove that he knowingly or intentionally manufactured methamphetamine. IC 35-48-4-1(a)(1)(A). In order to convict Jervis of dealing in methamphetamine as a Class A felony as charged in Count IV, the State was required to prove that the amount of methamphetamine involved weighed more than three grams. The term “manufacture” is defined as:

the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

IC 35-48-1-18(1). The State contends that it met its burden of establishing a prima facie case that Jervis committed the act of manufacturing methamphetamine, and therefore, the trial court should not have granted Jervis’s motion for directed verdict. Specifically, the State asserts that ample evidence was presented that the manufacturing process had begun and was

ongoing, that Jervis was involved in the manufacturing, and that the manufacturing occurred in Carroll County. We agree.

Here, the evidence presented by the State demonstrated that Jervis knowingly or intentionally manufactured methamphetamine. In their search of Jervis's property, the officers discovered not only all of the precursors for manufacturing methamphetamine, but also substances representing the various steps of the process for making methamphetamine. Testimony was presented that the "pill dough" that was discovered was an indication of the first step in the process. *Tr.* at 142. The substances from the containers found in the truck represented the middle step of the process. *Id.* Further, the officers found the finished product in their search of Jervis's property. *Id.* at 143. Additionally, the officers found evidence of currently usable precursors (camping fuel, cans of starting fluid, bottles of Heet, lithium batteries, and anhydrous ammonia) and previously used precursors (burn piles containing cans of starting fluid with holes punched in them, empty containers of camping fuel, batteries, and their casings, all of which had been burnt).

Furthermore, Jervis's involvement in the manufacturing of methamphetamine was also established by the State's evidence. The house and property where the precursors and substances were found was Jervis's residence. The truck where other evidence was discovered was registered to Jervis. Jervis, himself, was found hiding under a tablecloth in a field adjacent to his residence. This evasive conduct by Jervis permits a reasonable inference of guilty knowledge. *See Erickson v. State*, 439 N.E.2d 579, 580 (Ind. 1982) (finding fact that defendant was found hiding in crawl space under porch was ample evidence of flight to avoid arrest and justified giving instruction on flight as consciousness of guilt); *Jacobs v.*

State, 802 N.E.2d 995, 998 (Ind. Ct. App. 2004) (defendant's flight from scene of crime may be considered circumstantial evidence of guilt).

The State also established through its evidence that the manufacturing of methamphetamine occurred at Jarvis's residence, which was located in Carroll County. All of the precursors and substances found were located at Jarvis's residence, and this evidence provided a reasonable inference that all of the processes in the making of methamphetamine took place at the residence. Although some of the evidence was discovered in Jarvis's truck, that did not necessarily mean that a reasonable inference could not be made that the manufacturing process occurred at his residence where substantial evidence of manufacturing was found. We therefore conclude that it was improper for the trial court to issue a directed verdict on Counts II and IV as there was evidence of each element of the crimes charged, or, at a minimum, possible inconsistent inferences of such.

Although we reverse the erroneous judgment on the evidence in favor of Jarvis, he cannot be retried because an erroneous entry of acquittal by the trial court acts as an acquittal for double jeopardy purposes. *Taylor*, 863 N.E.2d at 921; *Casada*, 825 N.E.2d at 940.

Reversed.

FRIEDLANDER, J., and BAILEY, J., concur.